

# Brownfields Cleanup Revolving Loan Fund

## Intra Governmental Loans

### Information and Sample Documents

September 14, 2001

#### A. Introduction.

This package contains information and sample documents for pilots to review and consider when making an intra governmental loan. Unlike loan agreements between a cooperative agreement recipient (Lead Agency) and private borrower, the intra governmental loan is the reimbursable transfer of BCRLF loan funds within the same government. Typically, the loan will be made by the agency which manages the BCRLF to another agency or entity that is part of governmental structure. The intra governmental loan may also involve the transfer of BCRLF loan funds within the same agency which manages the cooperative agreement. In either case, the intra governmental loan must be repaid to the BCRLF account within a specified period of time.

Intra governmental loans may be considered by cooperative agreement recipients in limited circumstances. The Brownfields Cleanup Revolving Loan Fund Administrative Manual (Manual) provides for intra governmental loans (VI - 9), on a reimbursable basis if “...a state or local law establishes that the agency may borrow money from the political jurisdiction of the cooperative agreement recipient and raise funds to pay the loan back.” . **Intra governmental loans will require approval by the EPA project officer, following discussions with EPA headquarters.** This document provides guidance on the information that must be submitted to EPA for review and approval.

**Please note that the sample document and its specific provisions may or may not be appropriate to your program. Your own documents should be prepared based on your review of the sample in combination with a review of other program guidance, and applicable statutory and regulatory provisions. It is up to the user to review the sample carefully and determine whether they are appropriate for your program.**

For tracking and reporting purposes, the EPA will consider that an intra governmental loan as been issued when EPA has approved all documentation.

#### B. Standards and Documentation

Four standards, as described in detail below, must be met for a recipient to make an intra governmental loan. EPA project officers must receive documentation from the cooperative recipient which demonstrates that these standards have been met during the process of approving an intra governmental loan. Please note that it is also helpful when the cooperative agreement

recipient provides a summary of the facts which support and describe the intra governmental loan in a cover memo that accompanies the supporting documentation.

### **1. LEGAL AUTHORITY.**

The recipient must provide an opinion of counsel that the borrowing entity has the legal authority to enter into a legally binding obligation to repay, or a resolution made by a city council or other authorized body allowing entry into a binding obligation to repay a BCRLF loan. A *Sample Resolution* is attached for consideration.

The obligation to repay must be more than a “moral” obligation to repay, or a simple “promise” to do so. Similarly, it must NOT depend entirely on speculative circumstances such as sale of the property, at an unspecified date in the future. If a Resolution is used to evidence authorization for the use of BCRLF funds for an intra governmental loan and its repayment from identified funding sources, then a copy of the Resolution in lieu of a legal opinion should be provided.

If a City has legal authority to enter into loans without City Council approval, a Resolution would not be necessary.

### **2. IDENTIFIABLE SOURCE FOR REPAYMENT.**

**The borrowing entity must provide a letter or other written documentation which identifies the source of the fund(s) for repayment of the loan,** e.g., all or a significant portion of the proceeds of sale, in combination with proceeds from a TIF (tax increment financing), a guarantee backed by general revenue that becomes effective after a specified period of time (ideally five years), or, a funding mechanism such as payment in lieu of taxes.

### **3. AN ENTITY TO ASSURE REPAYMENT IS MADE.**

**The cooperative agreement recipient must provide a letter or other written documentation which describes how the repayment obligation under the loan will be monitored and enforced.** To ensure that the loan does not turn into a grant, the lead agency should identify an office or department in the city government separate from both the lead agency and the borrowing entity to oversee and assure that repayment of the loan obligation is enforced. The objective of the enforcement entity is to avoid potential conflicts of interest and to ensure that an “account payable” in the recipient’s financial records and an accounts receivable in the BCRLF records are established, monitored and audited. Typically a City Comptroller’s office can fulfill this role.

### **4. DEMONSTRATION THAT ALL PARTIES UNDERSTAND ROLES AND RESPONSIBILITIES**

The loan documents used by recipients for private borrowers accomplish several purposes.

The typical loan document represents a binding commitment on the part of the borrower to repay a loan, and obligates the borrower to carry out the project in accordance with CERCLA, the NCP, subpart O and other federal, state and local authorities. In the case of an intra governmental loan, the entity using the funds from the BCRLF for cleanup is already bound by the cooperative agreement to meet the same obligations because it is the same governmental entity (City, town, municipality) as the cooperative recipient (Lead Agency). For this reason, EPA believes the typical loan documents used for private borrowers may not be needed, or relevant, under the circumstances of an intra governmental loan. Even though the borrower is already bound by the cooperative agreement obligations, it is still important, and in fact, imperative that all parties within the borrower organization associated with the intra governmental loan fully understand their responsibilities and obligations under the terms and conditions of the cooperative agreement. In order to document that the borrower has this understanding and fully intends to comply with these requirements, the EPA recommends that prior to EPA approval of the intra governmental loan, the borrower submit documentation verifying that all parties associated with the intra governmental loan understand and plan to comply with the requirements of the cooperative agreement including the requirements of EPA assistance regulations (40 CFR Part 31 and 40 CFR Part 35, Subpart O) CERCLA and the NCP. The documentation may be in the form of a letter, memorandum of agreement, plan, modified loan agreement or some other written manner. The documentation submitted should clearly indicate that the borrower understands their obligations including the need to comply with the following provisions of the EPA requirements:

- a. The need to minimize the time that elapses between payment of BCRLF funds by EPA and the use of these funds to pay costs incurred in the cleanup.
- b. Compliance with competitive procurement requirements.
- c. Davis Bacon compliance
- d. MBE/WBE
- e. Other cross cutting requirements such as the Uniform Relocation Act.
- f. Descriptions of CERCLA and NCP requirements and limitations.
- g. Roles and responsibilities for carrying out CERCLA and NCP requirements.

## *Sample Resolution*

RESOLUTION OF THE CITY OF---- AUTHORIZING AN APPROPRIATION OF \$\_\_\_\_\_ FROM FUNDS PROVIDED TO THE CITY BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS PART OF THE BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM TO PROVIDE FOR THE CLEANUP OF THE \_\_\_\_\_ SITE AND PROVIDING THE BASIS FOR THE REPAYMENT OF THE FUNDS BY THE PARTY (or entity) WHO ULTIMATELY OCCUPIES THE SITE, OR OTHERWISE BY THE CITY.

WHEREAS, the property, located at \_\_\_\_\_ (explain why the City is doing this project)

WHEREAS, the City is authorized to exercise (cite or explain the City's authority to carry out the project, including specific authority to obtain revenue to replenish the loan fund)

WHEREAS, in the exercise of such powers as contained in \_\_\_\_\_ (authority cited above) the City desires to utilize certain funds to be provided to the City by the United States Environmental Protection Agency (the "EPA") as part of the Brownfields Cleanup Revolving Loan Fund (the "BCRLF") to provide for the environmental cleanup of the Site; and

WHEREAS, such funds will be provided by the EPA to the City as needed to meet specific expenses incurred by the City in connection with contracts entered into directly by the City for the environmental cleanup of the Site; and

WHEREAS, the Site is currently owned by the City (or has a financial interest in the site that allows the city to obtain of sales) and the City has determined that it is in a better position to convey the Site to a developer or other private entity if it provides for the environmental cleanup of the Site (or allow the current owner to satisfy the City's financial interest in the site); and

WHEREAS, there will be money available within the BCRLF for such purposes when needed; and

WHEREAS, the City desires to set forth the basis for the use of such funds as received from the EPA for the Site and the method of repaying such funds into the BCRLF; now therefore be it

RESOLVED, by the City of \_\_\_\_\_ as follows:

Section 1. The City is hereby authorized and directed to appropriate funds available or to be made available by the EPA in the BCRLF for the purposes of providing for the environmental cleanup of the Site.

Section 2. As part of the use of such funds the City hereby incorporates by reference the requirements and conditions of the EPA as contained in the Cooperative Agreement between the City and the EPA in connection with the establishment of the BCRLF, including the requirement that the cleanup be completed in compliance with CERCLA and consistent with the NCP as well as in accordance with applicable Federal cross cutting requirements. The City also agrees to ensure that its contractors use the BCRLF funds in compliance with the cooperative agreement. See the model resolution for details.

**The following \_\_\_\_ sections can be tailored to the specific revenue sources the City intends to use. The following is an example.**

Section 3. The funds so appropriated by the City from the BCRLF and utilized by the City for this purpose shall be repaid to such BCRLF by the City either from a) amounts repaid to the City from the private developer or other party to whom the City ultimately conveys the Site following the environmental cleanup provided for herein or (describe other rights in proceeds of sale that the City may have such as payments in satisfaction of liens or other revenue streams such as Tax Increment Financing, Payments in Lieu of Taxes of similar financial mechanisms) b) to the extent that the property is unable to be sold after a reasonable time (within five years of the completion of the environmental cleanup provided for herein) and payment is not otherwise provided for, the general funds of the City through budget appropriations in subsequent years so that such BCRLF may be made available by the City for the environmental cleanup of other sites.

Section 4. The City agrees that it will require the developer or other person or entity to whom the Site is conveyed following the environmental cleanup herein authorized, to pay the City the necessary amount to repay into the BCRLF the amount appropriated herein for the cleanup of the Site either as part of the sale agreement or pursuant to a) a Payment in Lieu of Tax Agreement (a "PILOT Agreement") with such developer or entity ) b) a Tax Increment Financing arrangement; or c) another finance mechanism or combination of mechanisms available to the City. To the extent that the repayment to the City is provided by a PILOT Agreement (or other specified revenue source) in lieu of being provided for in full at the time of sale such PILOT Agreement (or other specified mechanism) shall be entered into within five years of the completion of environmental cleanup and the repayment, either through the PILOT or by the City, must be made in full no later than 15 years from the completion of the environmental cleanup.

Section 5. This resolution shall take effect immediately.